

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TENNESSEE

Eastern Division

DONALD BRANCH

JUDGMENT IN A CIVIL CASE

v.

GLEN TURNER

CASE NUMBER: 05-1236-B/An

Decision by Court. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in compliance with the order entered in the above-styled matter on December 30, 2005:

Plaintiff's first claim, ineffective assistance based on the failure of appellate counsel to raise the recusal issue, is DISMISSED.

Claim 2, regarding judicial bias, is barred by procedural default and is DISMISSED.

The Court DISMISSES Claim 3 regarding the allegedly defective indictments as the claim is barred by procedural default.

As the Sixth Circuit, relying on Schiro and Teague, has held that federal prisoners may not raise claims based on Blakely and United States v. Booker, 125 S. Ct. 738 (2005), in an initial motion pursuant to 28 U.S.C. § 2255, Humphress v. United States, 398 F.3d 855, 860-63 (6th Cir. 2005), Claims 4-6 are, therefore, DISMISSED.

Claim 7, regarding sufficiency of the evidence, is without merit and is DISMISSED.

As federal habeas relief is not available with respect to the issue of allegedly deficient jury instructions, the Court DISMISSES Claim 8.

As federal habeas relief is not available with respect to the issue regarding the admission of blood test results, the Court DISMISSES Claim 9.

As federal habeas relief is not available with respect to the issue of the refusal to permit the defense to rebut the State's closing argument, the Court DISMISSES Claim 10.

Because the issues addressed in Claims 11 and 12 (additional sentencing issues) concern the application of Tennessee statutory law, and state-court decisions applying that law, the issue is not cognizable in a § 2254 petition. Therefore, the Court DISMISSES Claims 11 and 12.

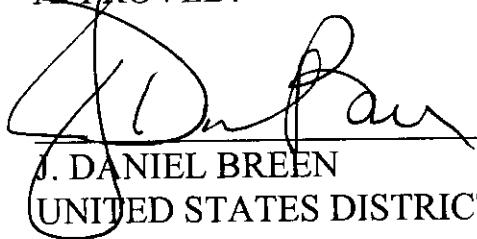
Because it "plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court," summary dismissal prior to service on the respondent is proper. Rule 4, Section 2254 Rules. The petition is DISMISSED.

The Court DENIES a certificate of appealability.

For the same reasons the Court denies a certificate of appealability, the Court determines that any appeal would not be taken in good faith. It is therefore CERTIFIED, pursuant to Fed. R. App. P. 24(a), that any appeal in this matter is not taken in good faith, and leave to appeal in forma pauperis is DENIED. Accordingly, if petitioner files a notice of appeal, he must also pay the full \$255 appellate filing fee or file a motion to proceed in forma pauperis and supporting affidavit in the Sixth Circuit Court of Appeals within thirty (30) days.

IT IS SO ORDERED this 30 day of December, 2005.

APPROVED:



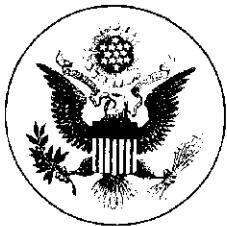
J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE

THOMAS M. GOULD
CLERK

12/30/05
DATE

BY: C. Reed
DEPUTY CLERK

This document entered on the docket sheet in compliance
with Rule 58 and/or 79(a) FRCP on 12/30/05.



Notice of Distribution

This notice confirms a copy of the document docketed as number 6 in case 1:05-CV-01236 was distributed by fax, mail, or direct printing on December 30, 2005 to the parties listed.

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Honorable J. Breen
US DISTRICT COURT